Appl. No. 10/082,038   **JAN 1 2 2007**
Amdt. dated January 12, 2007
Reply to Final Office Action of November 15, 2006

AFTER FINAL EXPEDITED PROCEDURE
<u>REMARKS</u>

Claims 1 to 61 were pending in the application at the time of final examination. Claims 1 to 61 stand rejected as obvious.

Claims 30 and 59 have been amended to correct a grammatical error that was inadvertently made in an earlier amendment. These amendments simply correct an informality and so require no substantive work on the part of the Examiner. Accordingly, Applicant respectfully requests entry to place the application in condition for allowance in view of the following remarks, or in the alternative to narrow the issues for appeal.

Claims 1, 8, 37, 59 and 60 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,959,307, hereinafter referred to as Apte, in view of U.S. Patent Application Pub. No. 2003/0055883, hereinafter referred to as Wiles and further in view of Fomenko.

The final rejection repeated verbatim the prior rejection of these claims and provided, in part, the following rationale for maintaining the rejection:

> Applicant asserts the prior art fails to teach of deploying the Web module onto a Web server platform using the deployment tool of the software development environment, the deployment tool including a server plug-in provided by the provider of the hosting server software, the server plug-in automatically installing a Web module on a corresponding platform when the Web module complies, with the component-based platform-independent specification.

Applicant respectfully notes that this is a paraphrase of one element in Claim 1 and fails to address the fact that Applicant pointed out specific reasons in the prior response why a prima facie obviousness rejection had not been made in view of the requirements of the MPEP, i.e.,

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The rejection has reduced Applicants' claim language to a gist--a deployment description taken from Apte, a server plug-in taken from Wiles and a version control system server.

The rejection has cited no teaching in either Apte or Wiles that described such a deployment tool and has cited no teaching in Wiles that the plug-ins install anything.

This description of Wiles concerning plugins must be modified to change the plugins from ones that are used for "internal WebServer monitoring and proxying, Internet server management, and gathering of XML data to forward to the site monitor," to a plugin for "automatically installing a Web module on a corresponding server platform when the Web module complies with the component-based platform-independent specification."
The rejection failed to cite any suggestion of such a modification in either reference and the rejection failed to even recognize that such a modification is needed.

Changing the plugins of Wiles to be in a deployment tool that uses the deployment descriptor of Apte would render Wiles unsatisfactory for is intended purpose because the plugins would not provide "internal WebServer monitoring and proxying, Internet server management, and gathering of XML data to forward to the site monitor."
If the rejection is purposing to modify Apte, the evidence is even stronger. As previously noted, Apte teaches an adapter on the client side and modifying the client side adapter to be a server plugin completely changes the principles of operation of Apte.

The prior art in Fomenko provided exactly the capability that is used to combine the three references. Accordingly, if this was all that was needed, the prior art was completely adequate. Therefore, the motivation fails to provide any basis for the combination. Further, using a version control plug-in in either Apte or Wiles completely changes the principles of operation of the references and the rejection has failed to explain how such a change would be made and the prior art still work for its intended purpose.

The rationale for continuing the rejection did not even acknowledge the various traverses and instead continued:

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The Examiner respectfully disagrees, Apte teaches of a
deployment tool to be invoked by clients (column 7, lines
4-11, 23-27). Wiles teaches of a module on a server
machine which includes plug-ins used for various purposes
(paragraph 226). The plug-ins can be used for processing
requests for any purpose including conditional
installation (paragraph 229-231).

This is further direct evidence of an improper form of
analysis. Specific plug-ins have been found in one reference
and a deployment descriptor for an enterprise JavaBean in
another. The references were not considered as a whole, but as
indicated in the above rationale for continuing the rejection,
a specific deployment descriptor is taken as suggesting all
applications of a deployment descriptor, and specific plug-ins
as teaching an ability to implement plug-ins of any nature on a
server.

The courts and the MPEP specifically describe that this
level of analysis is a failure to consider either the
references or the invention as a whole. The MPEP requires:

II.< BASIC CONSIDERATIONS WHICH APPLY TO OBVIOUSNESS
REJECTIONS

    When applying 35 U.S.C. 103, the following tenets of
patent law <u>must be</u> adhered to:

(A) The claimed invention <u>must be considered as a whole</u>;

(B) The references <u>must be considered as a whole and must
suggest the desirability</u> and thus the obviousness of
making the combination;

(C) The references must be viewed without the benefit of
impermissible hindsight vision afforded by the claimed
invention; and

(D) Reasonable expectation of success is the standard with
which obviousness is determined. (Emphasis Added.)

MPEP § 2141, 8th Ed., Rev 5, pg. 2100-117 (August 2006).

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The portion of Apte, Col. 7, lines 4 to 11, and 23 to 27, relied upon in both the rejection and the rationale for continuing the reject taught:

> An EJB is a non-visual, remote object designed to run on a server and be invoked by clients. An EJB can be built from multiple, non-visual JavaBeans. EJBs are intended to live on one machine and be invoked remotely from another machine, and EJBs have a deployment descriptor that is intended as a description about the bean that can be read by a tool. EJBs are also platform independent and can be used on any platform that supports Java.
> . . . .Any platform independent JavaBean can be adopted, through the use of a deployment tool, into a platform specific EJB that has the correct qualities of services available to meet the specific requirements of existing business systems and applications

Thus, the cited portion of Apte taught that the purpose of the deployment descriptor was to be read by a tool and that a deployment tool was used to adopt any platform independent JavaBean into a platform specific Enterprise JavaBean. These general teachings concerning Enterprise JavaBeans, a deployment descriptor for Enterprise JavaBeans, and a deployment tool are limited to Enterprise JavaBeans and the specific invention of Apte. Nevertheless, the rejection failed to consider the context, and instead extracted elements having a name similar to the name of an element in Claim 1. The CAFC and the MPEP make it clear that this is error, because such an analysis fails to consider either the reference or Applicant's Claim 1 as a whole.

Further, Apte, taken as a whole, failed to mention a "Web module" and rather considers "data marshalling modules." Accordingly, Apte, as one of skill in the art, considered modules, but the modules were unrelated to anything recited in Applicant's Claim 1 and in particular there is no suggestion or teaching of a Web module. In addition, the words "package" or "packaging" were not found in an electronic search of Apte.

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Nevertheless, the rejection stated, based upon the above quotation from Apte, that "Apte teaches of providing a deployment descriptor and packaging the deployment descriptor with an application <u>in a platform specific model</u>." Since package or packaging do not appear in the quote from Apte or even in Apte as a whole, this conclusory statement is not supported by Apte and further demonstrates that Apte was not considered as a whole as required by both the MPEP and the courts.

Rather, "deployment descriptor" was found and extracted from Apte and then applied to the claim language incorrectly. The claim language does not recite "a platform specific model" as cited in the rejection, but rather

> packaging the functional software unit with the module deployment descriptor into a Web module for deployment in accordance with a <u>component-based platform-independent specification</u> (Emphasis Added.)

The characterization in the rejection of Apte teaching "a platform specific module" is an admission by the Office that Apte teaches away from the recited packaging for deployment in accordance with a platform independent specification. Further, since the rejection relied soley on the above quoted portion of Apte, there is no teaching or suggestion of packaging into a Web module for deployment in accordance with a component-based platform independent specification. As noted Apte fails to teach or suggest either element. This alone is sufficient to overcome the rejection.

Next, as indicated above, the rejection extracts a teaching of specific plug-ins from Wiles, as cited in the prior response, and alleges in the rationale for continuing the rejection, as quoted above, that this suggests and enables server plug-ins in general. This ignores several limitations in Claim 1. Claim 1 recites:

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deploying the Web module onto a Web server platform
using the deployment tool of the software development
environment

An electronic search of Wiles for "deploy" failed to have
any hits. Accordingly, Wiles fails to suggest or teach
anything concerning deployment using the deployment tool of the
software development environment. Thus, no suggestion or
teaching of explicit claim limitations have been provided in
the rejection. The cited sections in Wiles are describing
elements on a managed web server in an E-business managed
customer environment. (See Fig. 10 of Wiles) Nevertheless,
pieces are extracted from this web server, generalized and then
taken to teach not only deployment but also a deployment tool
of the software development. As previously noted:

> The rejection has reduced Applicants' claim language
> to a gist--a deployment description taken from Apte, a
> server plug-in taken from Wiles and a version control
> system server. The MPEP specifically states that this
> type of analysis is inappropriate:

> II. < DISTILLING THE INVENTION DOWN TO A "GIST" OR
>   "THRUST" OF AN INVENTION DISREGARDS "AS A WHOLE"
>   REQUIREMENT

> Distilling an invention down to the "gist" or
> "thrust" of an invention disregards the requirement
> of analyzing the subject matter "as a whole." *W.L.
> Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d
> 1540, 220 USP

MPEP § 2141.02, 8th Ed., Rev. 3, p. 2100-130 (August
2005).

In addition, the rationale for combining Wiles and Apte
was "the capability to monitor and optimize a client is
provided by keeping manual configurations minimal." This
extracts a goal from a site monitor according to Wiles and
applies it in a different context that has nothing to do with

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Apte, or Applicant's Claim 1. As previously pointed out, the MPEP puts specific limitations and requirements on combinations of references. Applicant previously pointed out that these parts of the MPEP were not complied with and quoted some of them above. The rationale for continuing the rejection failed to even acknowledge these traversals in the prior response. Therefore, the traversals stand admitted as correct, and are incorporated herein by reference from the prior response.

Applicant has demonstrated that the rejection has done exactly what the MPEP had directed is incorrect. The rejection found elements with a similar name in the prior art, extracted the elements irrespective of the context of the prior art, attributed characteristics to the elements that were neither suggested nor disclosed by the prior art from which they were taken, i.e., modified the elements, and then recombined the so modified elements to arrive at Applicant's Claim 1. Despite being made final, the rejection failed to address Applicant's prior remarks and still failed to make a prima facie obviousness rejection. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of Claim 1.

Each of independent Claims 8, 37, 59 and 60 includes a limitation similar to that discussed above with respect to Claim 1. Thus, the comments with respect to Claim 1 are applicable to each of Claims 8, 37, 59 and 60 and are incorporated herein by reference for each of these claims. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of each of Claims 8, 37, 59 and 60.

Claims 2 to 4, 6, 9, 10, 12, 14, 31 to 33, 35, 38, 39, 41 and 43 stand rejected as being obvious over Apte, Wiles and Fomenko and further in view of U.S. Patent Application Publication No. 2004/0268344, hereinafter referred to as "Obilisetty." Assuming arguendo that the combination of

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references is correct, the information cited in the fourth reference does not overcome the shortcomings of the primary combination, as noted above with respect to the corresponding independent claim from which each of these claims depends. Thus, each of Claims 2 to 4, 6, 9, 10, 12, 14, 31 to 33, 35, 38, 39, 41 and 43 distinguish over the combination of references for at least the same reasons as the independent claim from which each depends. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of each of Claims 2 to 4, 6, 9, 10, 12, 14, 31 to 33, 35, 38, 39, 41 and 43.

Claims 5 and 34 stand rejected as being obvious over Apte, Wiles and Fomenko and further in view of U.S. Patent Application Publication No. 2003/0079052, hereinafter referred to as "Kushnirskiy." Assuming arguendo that the combination of references is correct, the information cited in the fourth reference does not overcome the shortcomings of the primary combination, as noted above with respect to the corresponding independent claim from which each of these claims depends. Thus, each of Claims 5 and 34 distinguish over the combination of references for at least the same reasons as the independent claim from which each depends. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of each of Claims 5 and 34.

Claims 7, 15, 36, and 44 stand rejected as being obvious over Apte, Wiles and Fomenko and further in view of BEA. Assuming arguendo that the combination of references is correct, the information cited in the fourth reference does not overcome the shortcomings of the primary combination, as noted above with respect to the corresponding independent claim from which each of these claims depends. Thus, each of Claims 7, 15, 36, and 44 distinguish over the combination of references for at least the same reasons as the independent claim from which each depends. Applicants respectfully request

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reconsideration and withdrawal of the obviousness rejection of each of Claims 7, 15, 36, and 44.

Claims 11, and 40 stand rejected as being obvious over Apte, Wiles and Fomenko and further in view of U.S. Patent Application Publication No. 2003/0070006, hereinafter referred to as "Nadler." Assuming arguendo that the combination of references is correct, the information cited in the fourth reference does not overcome the shortcomings of the primary combination, as noted above with respect to the corresponding independent claim from which each of these claims depends. Thus, each of Claims 11 and 40 distinguish over the combination of references for at least the same reasons as the independent claim from which each depends. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of each of Claims 11 and 40.

Claims 13 and 42 stand rejected as being obvious over Apte, Wiles and Fomenko and further in view of U.S. Patent Application Publication No. 2003/0079052, hereinafter referred to as Kushnirskiy. Assuming arguendo that the combination of references is correct, the information cited in the fourth reference does not overcome the shortcomings of the primary combination, as noted above with respect to the corresponding independent claim from which each of these claims depends. Thus, each of Claims 13 and 42 distinguish over the combination of references for at least the same reasons as the independent claim from which each depends. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of each of Claims 13 and 42.

Claims 16 to 18, 21, 25, 45 to 47, 50, 54 and 61 stand rejected as being obvious over Apte, Wiles and Fomenko and further in view of U.S. Patent Publication No. 2003/0079052, hereinafter referred to as Kushnirskiy. The rejection is verbatim from the prior rejection. In the prior response, Applicant stated:

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With respect to the combination of the three primary references, the above comments with respect to Claim 1 are applicable and are incorporated herein by reference. Thus, the combination of the three primary references is not well founded. <u>Further, the cited section in Kushnirskiy discusses the browser plug-in environment. Thus, Kushnirskiy must be modified from a plug-in for a user application, e.g., a browser, to a server plugin. No showing has been made on why one of skill would make such a change. In addition, the cited section fails to discuss actions taken in response to a user selection.</u> Thus, the combination is further evidence that at best a gist of the claims has been considered and that the reference has not been considered as a whole. (Emphasis Added)

Applicant provided additional rationale as to why this rejection was not well founded. The final rejection failed to address this traverse and so it stands admitted as correct. Therefore, these claims should have been allowed. Each of Claims 16 to 18, 21, 25, 45 to 47, 50, 54 and 61 distinguish over the combination of references for reasons in addition to at least the same reasons discussed above with respect to Claim 1. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of each of Claims 16 to 18, 21, 25, 45 to 47, 50, 54 and 61.

Claims 19, 20, 22, 23, 26 to 28, 48, 49, 51, 52, and 55 to 57 stand rejected as being obvious over Apte, Wiles and Fomenko and further in view of U.S. Patent Publication No. 2003/0079052, hereinafter referred to as Kushnirskiy and still further in view of Obilisetty. Assuming arguendo that the combination of references is correct, the information cited in the fifth reference does not overcome the shortcomings of the primary combination, as noted above with respect to the corresponding independent claim from which each of these claims depends. Thus, each of Claims 19, 20, 22, 23, 26 to 28, 48, 49, 51, 52, and 55 to 57 distinguish over the combination of references for at least the same reasons as the independent

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claim from which each depends. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of each of Claims 19, 20, 22, 23, 26 to 28, 48, 49, 51, 52, and 55 to 57.

Claims 24 and 53 stand rejected as being obvious over Apte, Wiles and Fomenko and further in view of U.S. Patent Publication No. 2003/0079052, hereinafter referred to as Kushnirskiy and still further in view of Nadler. Assuming arguendo that the combination of references is correct, the information cited in the fifth reference does not overcome the shortcomings of the primary combination, as noted above with respect to the corresponding independent claim from which each of these claims depends. Thus, each of Claims 24 and 53 distinguish over the combination of references for at least the same reasons as the independent claim from which each depends. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of each of Claims 24 and 53.

Claims 29 and 58 stand rejected as being obvious over Apte, Wiles and Fomenko and further in view of U.S. Patent Publication No. 2003/0079052, hereinafter referred to as Kushnirskiy and still further in view of BEA. Assuming arguendo that the combination of references is correct, the information cited in the fifth reference does not overcome the shortcomings of the primary combination, as noted above with respect to the corresponding independent claim from which each of these claims depends. Thus, each of Claims 29 and 58 distinguish over the combination of references for at least the same reasons as the independent claim from which each depends. Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of each of Claims 29 and 58.

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Claims 1 to 61 remain in the application. Claims 30 and 59 have been amended. For the foregoing reasons, Applicant(s) respectfully request allowance of all pending claims. If the Examiner has any questions relating to the above, the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant(s).
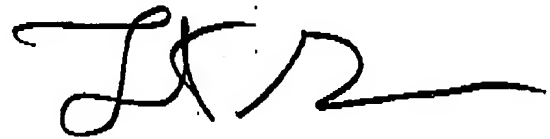
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I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office, Fax No. 571-273-8300, on January 12, 2007.

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